
PRELIMINARY DRAFT

No. 3399

PREPARED BY LEGISLATIVE SERVICES AGENCY 2008 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 14-8-2-53; IC 14-9-8-1; IC 14-21-1;
IC 14-22-40-5; IC 23-14-57-4.

Synopsis: Archeology. Redefines "artifact", and changes the date used in determining whether an object or feature is an artifact. Redefines "burial ground" to include certain historic sites. Redefines "plan" to include a plan for excavation of ground related to construction. Exempts qualified professional archeologists who conduct phase 1 archeological surveys from certain archeological restrictions. Establishes criminal penalties for certain actions that disturb human remains. Requires the department of natural resources (department) to take action on archeology and development plans within 60 days. Requires a person disturbing ground to use reasonable care and diligence to determine if the ground that may be disturbed is within 100 feet of a cemetery or burial ground. Requires a person who disturbs buried human remains or artifacts to cease disturbing the remains or artifacts and the surrounding area within 100 feet, and makes it a Class A infraction to fail to do so. Includes excavating or covering over the ground a prohibited activity within 100 feet of the limits of a cemetery or burial ground. Establishes certain requirements for development plans and archeological plans. Establishes boundary limits for burial sites. Applies certain notice requirements to a person who disturbs
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Effective: July 1, 2008.



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burial grounds. Requires a person to stop disturbing the ground near a discovered artifact or burial object for ten business days after notifying the department. Makes reports concerning the location of historical or archeological sites confidential under some circumstances. Allows certain persons to accompany a conservation officer to investigate a violation of historic preservation and archeology law. Establishes a fund to assist private homeowners who accidentally discover an artifact, a burial object, or human remains and need assistance to comply with an approved archeological or development plan. Allows a court to order restitution for certain costs related to the violation of historic preservation and archeology law. Makes it a Class D felony to possess looted property and a Class C felony if the cost of carrying out an archeological investigation on the site that was damaged to obtain the looted property is more than \$100,000. Provides that a disinterment under a plan approved by the department is exempt from other disinterment procedures. Repeals and relocates definition of "conservation officer". Makes conforming changes. Makes an appropriation.



A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 14-8-2-53 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 53. "Conservation
3 officer" for purposes of ~~IC 14-9-8~~, has the meaning set forth in
4 ~~IC 14-9-8-1~~; **refers to an officer employee of the law enforcement**
5 **division organized under IC 14-9-8.**

6 SECTION 2. IC 14-21-1-2 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. As used in this
8 chapter, "artifact" means:

9 **(1) a feature that is nonportable evidence of past human**
10 **behavior or activity that is found on or in the ground,**
11 **including structural remains formed before December 31,**
12 **1870; or**

13 **(2) an object made, or shaped by human modified, or used**
14 **workmanship before December 31, 1870.**

15 SECTION 3. IC 14-21-1-3 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. As used in this
17 chapter, "burial ground" means ground in which human remains are
18 buried. The term includes **the following:**

19 **(1) The land associated with or incidental to the burial of human**
20 **remains.**

21 **(2) Historic cemeteries or land with human remains buried**
22 **before December 31, 1939.**

23 SECTION 4. IC 14-21-1-8 IS AMENDED TO READ AS
24 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) As used in this
25 chapter, "plan" refers to:

26 (1) an archeological plan, as described in subsection (b); or

27 (2) a development plan, as described in subsection (c).

28 (b) As used in this chapter, "archeological plan" means a plan for
29 the systematic recovery, analysis, and disposition by scientific methods
30 of material evidence and information about the life and culture in past
31 ages.



(c) As used in this chapter, "development plan" means:

- (1) a plan for the erection, alteration, or repair of any structure; or
- (2) a plan for the excavation of any ground related to construction.**

SECTION 5. IC 14-21-1-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 24. (a) As used in this section, "agricultural purpose" includes farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture, ornamental horticulture, olericulture, pomiculture, animal husbandry, and poultry husbandry.

(b) Sections 25, 26, 28, and 29 of this chapter do not apply to the following:

- (1) Surface coal mining regulated under IC 14-34.
- (2) Cemeteries and human remains subject to IC 23-14.
- (3) Disturbing the earth for an agricultural purpose.
- (4) Collecting any object other than human remains that is visible in whole or in part on the surface of the ground, regardless of the time the object was made or shaped.
- (5) Qualified professional archeologists, as determined by the department, who conduct phase 1 archeological surveys according to guidelines adopted by the department.**

SECTION 6. IC 14-21-1-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 25. (a) The commission shall adopt rules establishing standards for plans.

(b) With respect to archeological plans, the rules must impose a standard of conduct that does the following:

- (1) Promotes the scientific investigation and conservation of past cultures.
- (2) Considers the interests and expertise of amateur archeologists and professional archeologists.

(c) With respect to development plans, the rules must impose a standard of conduct that preserves and protects both of the following:

- (1) The rights and interests of landowners.
- (2) The sensitivity of human beings for treating human remains with respect and dignity, as determined by the commission.

(d) **Subject to subsection (e)**, plans required under this chapter must be submitted to the department for approval according to rules adopted by the commission.

(e) Proposed plans submitted to the department must be:

- (1) approved;**
- (2) denied; or**
- (3) held because of the need for additional information;**

by the department not more than sixty (60) days after the date of submission. If the department does not take any action on the plan within the time required by this subsection, the plan is considered to be approved, unless approval is prohibited under a state or



1 federal law. If the department requests additional information
 2 under subdivision (3), the department shall approve or deny the
 3 resubmitted plan not more than thirty (30) days after the plan is
 4 received.

5 SECTION 7. IC 14-21-1-26 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 26. (a) A person who
 7 disturbs the ground for the purpose of discovering artifacts, ~~or~~ burial
 8 objects, **or human remains** must do so in accordance with a plan
 9 approved by the department under section 25 of this chapter or under
 10 IC 14-3-3.4-14 (before its repeal).

11 (b) A person who recklessly, knowingly, or intentionally violates
 12 this section commits **the following**:

13 (1) A Class A misdemeanor, **if the violation does not involve**
 14 **disturbing human remains.**

15 (2) A Class D felony, **if the violation involves disturbing**
 16 **human remains.**

17 SECTION 8. IC 14-21-1-26.5 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 26.5. (a)
 19 Notwithstanding IC 23-14-44-1, this section does not apply to the
 20 following:

21 (1) A public utility (as defined in IC 8-1-2-1(a)).

22 (2) A corporation organized under IC 8-1-13.

23 (3) A municipally owned utility (as defined in IC 8-1-2-1(h)).

24 (4) A surface coal mining and reclamation operation permitted
 25 under IC 14-34.

26 (b) Except as provided in this subsection, subsection ~~(b)~~, (c), and
 27 subsection ~~(c)~~, (d), a person may not disturb the ground within **the**
 28 **boundary limits of a burial ground or** one hundred (100) feet of a
 29 ~~burial ground or~~ cemetery for the purpose of **excavating or covering**
 30 **over the ground or** erecting, altering, or repairing any structure
 31 without having a development plan approved by the department under
 32 section 25 of this chapter or in violation of a development plan
 33 approved by the department under section 25 of this chapter. The
 34 department must review the development plan not later than sixty (60)
 35 days after the development plan is submitted.

36 ~~(b)~~ (c) A development plan:

37 (1) must be approved if a person intends to:

38 (A) **excavate or cover over the ground; or**

39 (B) construct a new structure or alter or repair an existing
 40 structure;

41 that would significantly impact the burial ground or cemetery; and

42 (2) is not required if a person intends to:

43 (A) **excavate or cover over the ground; or**

44 (B) erect, alter, or repair an existing structure;

45 for an incidental or existing use that would not impact the burial
 46 ground or cemetery.



1 ~~(c)~~ **(d)** A development plan for a governmental entity to disturb
 2 ground within one hundred (100) feet of a ~~burial ground~~ **or** cemetery
 3 **or the boundary limits of a burial ground** must be approved as
 4 follows:

5 (1) A development plan of a municipality requires approval of the
 6 executive of the municipality and does not require the approval of
 7 the department. However, if the burial ground or cemetery is
 8 located outside the municipality, approval is also required by the
 9 executive of the county where the burial ground or cemetery is
 10 located. A county cemetery commission established under
 11 IC 23-14-67-2 may advise the executive of the municipality on
 12 whether to approve a development plan.

13 (2) A development plan of a governmental entity other than:

14 (A) a municipality; or

15 (B) the state;

16 requires the approval of the executive of the county where the
 17 governmental entity is located and does not require the approval
 18 of the department. However, if the governmental entity is located
 19 in more than one (1) county, only the approval of the executive of
 20 the county where the burial ground or cemetery is located is
 21 required. A county cemetery commission established under
 22 IC 23-14-67-2 may advise the county executive on whether to
 23 approve a development plan.

24 (3) A development plan of the state requires the approval of the
 25 department.

26 **(e) A development plan may require surveys to determine the**
 27 **boundaries of the burial ground with respect to the proposed**
 28 **alteration.**

29 **(f) If a burial ground is within an archeological site, an**
 30 **archeological plan is required to be part of the development plan.**

31 **(g) The boundary limits of a burial ground under this section**
 32 **are either:**

33 **(1) the area marked by a permanent visible boundary,**
 34 **including a fence or wall; or**

35 **(2) if there is not a permanent visible boundary, the boundary**
 36 **limits of a burial ground determined by the department based**
 37 **on records or surveys of the geographic limits of the historic**
 38 **or prehistoric site in which human remains, mounds, or**
 39 **funerary artifacts are reported to occur.**

40 ~~(d)~~ **(h)** A person who recklessly, knowingly, or intentionally violates
 41 this section commits a Class A misdemeanor. However, the offense is
 42 a Class D felony if the person disturbs buried human remains or grave
 43 markers while committing the offense.

44 SECTION 9. IC 14-21-1-27 IS AMENDED TO READ AS
 45 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 27. (a) A person who
 46 disturbs buried human remains **or burial grounds** shall do the



1 following:

2 (1) Notify the department within two (2) business days of the time
3 of the disturbance.

4 (2) Treat or rebury the human remains in a manner and place
5 according to rules adopted by the commission or a court order and
6 permit issued by the state department of health under
7 IC 23-14-57.

8 (b) A person who recklessly, knowingly, or intentionally violates
9 this section commits a Class A misdemeanor.

10 SECTION 10. IC 14-21-1-28 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 28. A person who ~~with~~
12 ~~the intent to disturb ground for the purpose of discovering or removing~~
13 ~~artifacts, burial objects, grave markers, or human remains, disturbs~~
14 ~~buried~~ **recklessly, knowingly, or intentionally disturbs** human
15 remains or grave markers **while moving, collecting, or removing**
16 **artifacts or burial objects** either:

17 (1) without a plan approved by the department under:

18 (A) section 25 of this chapter; or

19 (B) IC 14-3-3.4-14 (before its repeal); or

20 (2) in violation of such a plan;

21 commits a Class D felony.

22 SECTION 11. IC 14-21-1-29 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 29. (a) A person who
24 discovers, **uncovers, collects, or moves** an artifact or burial object
25 while disturbing the ground for a purpose other than the discovery of
26 artifacts or burial objects shall do the following:

27 (1) Immediately cease disturbing the ground **and the area within**
28 **one hundred (100) feet of the artifact or burial object.**

29 (2) Notify the department within two (2) business days after the
30 time of the disturbance.

31 (b) After notification under subsection (a), the department may do
32 any of the following:

33 (1) Authorize the person to continue the ground disturbing
34 activity, with or without conditions.

35 (2) Require that continued ground disturbance activity be
36 conducted only in accordance with an approved plan. However,
37 this subdivision does not apply after ~~thirty (30)~~ **ten (10) business**
38 **days** from the date that the department receives notice.

39 **(c) A person who violates subsection (a) commits a Class A**
40 **infraction.**

41 SECTION 12. IC 14-21-1-32 IS ADDED TO THE INDIANA
42 CODE AS A NEW SECTION TO READ AS FOLLOWS
43 [EFFECTIVE JULY 1, 2008]: Sec. 32. (a) **Subject to subsections (b)**
44 **and (c), the division may keep reports and information concerning**
45 **the location of historic and archeological sites confidential if the**
46 **director of the division determines that disclosure would likely:**



- (1) risk harm to the historic or archeological site;
- (2) cause a significant invasion of privacy; or
- (3) impede the use of a traditional religious site by practitioners.

(b) The division may not disclose reports and information required to be confidential under federal law.

(c) If the director of the division determines that reports and information should be confidential under subsection (a), the director of the department, in consultation with the director of the division, shall determine who may have access to the confidential reports and information.

SECTION 13. IC 14-21-1-33 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 33. An employee of the division or a person authorized by the department may accompany a conservation officer on public or private property to determine if there is a violation of this article.**

SECTION 14. IC 14-21-1-34 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 34. (a) The division may conduct a program to assist private homeowners who have accidentally discovered an artifact, a burial object, or human remains and who need assistance to comply with an approved plan to excavate or secure the site from further disturbance. The division may conduct the program alone or by entering into an agreement with any entity that the division selects.**

(b) In conducting a program under subsection (a), the division may receive gifts and grants under terms, obligations, and liabilities that the director of the division considers appropriate. The director shall use a gift or grant received under this subsection:

- (1) to carry out subsection (a); and
- (2) according to the terms and obligations of the gift or grant.

(c) The auditor of state shall establish the archeology preservation trust fund to hold money received under subsection (b).

(d) The director of the division shall administer the archeology preservation trust fund. The expenses of administering the archeology preservation trust fund shall be paid from money in the trust fund.

(e) The treasurer of state shall invest the money in the archeology preservation trust fund that is not currently needed to meet the obligations of the trust fund in the same manner as other public trust funds may be invested. The treasurer of state shall deposit in the archeology preservation trust fund the interest that accrues from the investment of the trust fund.



(f) Money in the archeology preservation trust fund at the end of a state fiscal year does not revert to the state general fund. There is annually appropriated to the division the money in the archeology preservation trust fund for the division's use in carrying out the purposes of this section.

(g) The division may adopt rules under IC 4-22-2 to govern the administration of this section.

SECTION 15. IC 14-21-1-35 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 35. (a) In addition to:**

(1) a:

(A) sentence imposed under this chapter for a felony or misdemeanor; or

(B) judgment imposed under this chapter for an infraction; and

(2) an order for restitution to a victim;

a court may order an individual to make restitution to the archeology preservation trust fund established under section 34 of this chapter for the division's costs incurred because of the offense committed by the individual.

(b) In ordering restitution under this section, the court shall consider the following:

(1) The schedule of costs submitted to the court by the division.

(2) The cost to the property owner to restore or repair the damaged area of an archeological site or burial ground and place the property in the property's original condition as nearly as practicable.

(3) The amount of restitution that the individual is or will be able to pay.

(c) The court shall immediately forward to the division a copy of an order for restitution made under this section.

SECTION 16. IC 14-21-1-36 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 36. A person who knowingly or intentionally receives, retains, or disposes of an artifact, a burial object, or human remains obtained in violation of this chapter commits possession of looted property, a Class D felony. However, the offense is a Class C felony if the fair market cost of carrying out a scientific archeological investigation of the area that was damaged to obtain the artifact, burial object, or human remains is at least one hundred thousand dollars (\$100,000).**

SECTION 17. IC 14-22-40-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 5.** As used in this chapter, "law enforcement officer" has the meaning set forth in IC 35-41-1-17. The term includes a conservation officer. ~~(as defined in~~



~~IC 14-9-8-1).~~

SECTION 18. IC 23-14-57-4 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. This chapter does not
apply to the **following**:

(1) **The** disinterment, disentombment, or disurnment of remains
upon the written order of the coroner of the county in which the
cemetery is situated.

(2) **The removal of human remains under a plan approved by
the division of historic preservation and archeology under
IC 14-21-1.**

SECTION 19. IC 14-9-8-1 IS REPEALED [EFFECTIVE JULY 1,
2008].

